PETER JOHN

IBLA 85-149 Decided April 15, 1986

Appeal from that part of a decision of the Fairbanks, Alaska, District Office, Bureau of Land Management, denying petition to reinstate parcel C of Native allotment F-027122.

Set aside and remanded.

1. Alaska: Native Allotments--Alaska Native Claims Settlement Act: Conveyances: Interim Conveyance--Alaska National Interest Lands Conservation Act: Valid Existing Rights

Where an interim conveyance to a Native village corporation under sec. 22(j) of ANCSA, 43 U.S.C. § 1621(j) (1982), is made after enactment of ANILCA, such a conveyance may not be considered a valid existing right under sec. 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a)(1) (1982), and a relinquished Native allotment application may constitute a valid existing right under sec. 22(j) of ANCSA, if the applicant can establish that his relinquishment was involuntary and unknowing.

APPEARANCES: Judith K. Bush, Esq., Alaska Legal Services, Fairbanks, Alaska, for appellant; Michael G. Hotchkin, Esq., Office of the Attorney General, Anchorage, Alaska, for the State of Alaska; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Peter John has appealed from that part of the October 24, 1984, decision of the Fairbanks, Alaska, District Office, Bureau of Land Management (BLM), denying reinstatement of parcel C of Native allotment F-027122. With regard to that parcel, for which John had sought reinstatement on June 23, 1983, by affidavit filed with BLM through Alaska Legal Services Corporation, the decision stated:

> This office has no reason to believe your relinquishment of Parcel C was not voluntary. Evidence in the file shows the

> relinquishment was filed after you learned Parcel C was in conflict with Parcel A of Lige Charlie's allotment. In addition, the remaining land in Parcel C of your allotment has been conveyed to Seth-de-ya-ah Corporation by Interim Conveyance No. 58[7] dated December 27, 1982.
>
> Because we have not received any evidence to the contrary, it is BLM's position that your relinquishment of Parcel C was knowingly and voluntarily given. The petition to reinstate Parcel C of your allotment application, F-027122, is hereby denied. Parcel C will be removed from the records when this decision becomes final.

Parcel C contained approximately 50 acres. On June 16, 1974, John signed a handwritten statement prepared by a BLM field examiner in which John relinquished any interest in parcel C because of a perceived conflict with parcel A of the Native allotment of Lige Charlie (F-027061). In his request for reinstatement of parcel C John claims that his relinquishment was neither voluntary nor knowing. On December 27, 1982, certain lands, including parcel C, but excluding the Charlie Native allotment (F-026062), were interim conveyed (Interim Conveyance 587) to Seth-de-ya-ah Corporation. The Charlie allotment was subsequently approved on July 12, 1983.

On appeal, counsel for John has filed a request that this case be remanded pursuant to Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), for proceedings mandated by State of Alaska v. Thorson (On Reconsideration), 83 IBLA 237 (1984). In support of its request, counsel for John argues the field examiner who obtained John's relinquishment did so without a field examination of parcel C; John applied for 50 acres in parcel C, while Charlie's parcel A contained only 39.98 acres; BLM failed to involve the Bureau of Indian Affairs in the relinquishment process; and BLM's finding of voluntariness in its decision has no basis in fact because in 1974 John was over 70 years of age and could neither read nor write English. Counsel further states that the purpose for remand would be to determine "what portion of Mr. John's Parcel C conflicts with Mr. Charlie's Parcel A and to seek reinstatement pursuant to Thorson-Westcoast for the portions of Parcel C which do not conflict with Mr. Charlie's Parcel A and which may have been conveyed to the Seth de ya ah Village Corporation" (Request for Remand at 3). Thus, the request for remand makes clear that John now seeks reinstatement of only that part of parcel C not in conflict with Charlie's allotment F-027061.

In response to the request for remand counsel for BLM argues that the request should be denied and the appeal dismissed because in accordance with Peter Andrews, Sr., 77 IBLA 316, 319 (1983), the Department is without jurisdiction over the land since it has been the subject of an interim conveyance to a Native corporation.

[1] We grant appellant's request for the following reasons. Interim conveyances and patents are generally considered as documents of equal significance in granting title under the Alaska Native Claims Settlement Act

(ANCSA), and upon granting title, the Department loses jurisdiction to adjudicate interests in the land conveyed. Peter Andrews, Sr., supra. In this case BLM has no jurisdiction to grant an allotment for the land sought, since it was previously conveyed to the Seth-de-ya-ah Village Corporation. Section 1410 of the Alaska National Interest Lands Conservation Act (ANILCA), amended section 22(j)(1) of ANCSA, 43 U.S.C. § 1621(j)(1) (1982), to read in pertinent part:

> Subject to valid existing rights * * * the force and effect of such an interim conveyance shall be to convey to and vest in the recipient exactly the same right, title, and interest in and to the lands as the recipient would have received had he been issued a patent * * *.

The question remains, however, whether BLM has an obligation to seek reconveyance of the land in question in order to allow allotment of that area. Section 905(a)(1) of ANILCA, 43 U.S.C. § 1634(a) (1982), approved subject to valid existing rights, on the 180th day following December 2, 1980, with certain exceptions, all Native allotment applications which were pending before the Department of the Interior on or before December 18, 1971. Section 905(a)(6) of ANILCA, 16 U.S.C. § 1634(a)(6) (1982), provides that automatic approval under section 905(a)(1) does not apply where an allotment application has been knowingly and voluntarily relinquished. In this case although parcel C of Native allotment F-027122 was relinquished, John now claims that relinquishment was unknowing and involuntary.

In Kenai Natives Association, Inc., 87 IBLA 58 (1985), the Board held that where a Native allotment application conflicts with an interim conveyance and the conflicting application has been relinquished prior to conveyance, and, therefore, was not excluded from the conveyance, the Department has no authority to reinstate the application pursuant to a request made subsequent to the interim conveyance. That holding might appear to be controlling in this case; however, Kenai Natives Association, Inc., is distinguishable on one critical fact. In Kenai the interim conveyance was dated March 21, 1980; thus, at the time of passage of ANILCA on December 2, 1980, the interim conveyance constituted a valid existing right under section 905(a)(1) of ANILCA. 1/ Kenai is not controlling in this case because the interim conveyance herein occurred on December 27, 1982, after the passage of ANILCA. Therefore, the interim conveyance may not be considered a valid existing right under section 905(a)(1) of ANILCA. The relinquished allotment

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1/ The Board stated in Kenai Natives Association, Inc., supra at 62:

"Initially, it must be recognized that the interim conveyance in this case issued pursuant to section 14(h)(3) of ANCSA prior to enactment of section 905 of ANILCA on December 2, 1980.
* * * * * * *

"Further, * * * the provision [section 905] was expressly made subject to valid existing rights. We believe that in the circumstances of this case the prior interim conveyance to Kenai constituted such a [valid existing] right."

application, however, may be considered a valid existing right under section 22(j) of ANCSA, 43 U.S.C. § 1621(j) (1982), if the applicant involuntarily and unknowingly relinquished the application.

Since ANILCA approved previously relinquished Native allotment applications which were not knowingly and voluntarily relinquished, the first inquiry under the circumstances of this case must be whether John knowingly and voluntarily relinquished his application as it related to parcel C. In its decision BLM found that John had knowingly and voluntarily relinquished. In its request for remand appellant has made certain allegations which, if true, might require a different result. For that reason, we believe it is appropriate to grant appellant's request for remand so that BLM may investigate the circumstances surrounding the relinquishment and to reconsider whether it was voluntary and knowing.

If BLM determines that parcel C was involuntarily and unknowingly relinquished, it should reinstate the application and, if appropriate, pursue recovery of the land through negotiation or litigation. See State of Alaska v. Thorson (On Reconsideration), supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge